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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2008-0081
	)	DEPARTMENT B
	)	
IN RE KUSHAWN J.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18369401

Honorable Joan L. Wagener, Judge Pro Tempore

APPEAL DISMISSED

Barbara LaWall, Pima County Attorney
By James M. Coughlin
Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly
Tucson
Attorneys for Minor

V Á S Q U E Z, Judge.

¶1 Kushawn J. challenges the juvenile court's disposition order, imposed after he admitted violating certain conditions of probation. Agreeing with the state that the issue is moot, we dismiss this appeal.

¶2 Kushawn was adjudicated delinquent in January 2008 after the juvenile court found the state had established he committed the offenses of possession of marijuana and possession of drug paraphernalia. On March 17, 2008, the court placed Kushawn on probation for six months. In May, the state filed a petition to revoke probation, alleging Kushawn had violated a number of conditions of probation. In exchange for the state's dismissal of one of the allegations, Kushawn subsequently admitted having violated certain conditions. In July, the court continued Kushawn on standard probation and ordered him to serve the next five weekends in detention. But the court further ordered that the weekend detention was "suspended, if the minor is compliant with the following: Shall drug test when requested and test clean; shall attend school every[]day, on time and with good behavior; shall comply with curfew; and, shall attend treatment." As the court explained at the disposition hearing, whether Kushawn would be required to spend a given weekend in detention would depend on his compliance with all probationary requirements during the preceding week.

¶3 Kushawn objected at the disposition hearing on the ground that he would not have an opportunity to challenge the probation officer's contention that he had failed to comply with the conditions required to avoid detention. Kushawn filed a motion for

reconsideration on August 7, 2008. He contended, inter alia, the process the juvenile court had instituted could potentially violate his right to a pre-detention hearing at which he could challenge the probation officer's assertion that he had violated the conditions of his probation. As directed, the state filed a response to the motion. It maintained that Kushawn's complaint was premature because no due process violation had yet occurred and that, in any event, contrary to Kushawn's argument, the court had not improperly delegated to a probation officer the determination of whether Kushawn was to be detained, nor had it ordered him detained without a hearing.

¶4 Kushawn timely appealed on August 15, 2008, before the juvenile court could rule on his motion for reconsideration. He raises essentially the same arguments on appeal that he did in his motion for reconsideration. He complains that "no provision was made for a weekly review hearing." In its answering brief, the state maintains the issue raised is moot. The state notes that, at the disposition hearing, the court had set the case for a probation review hearing on September 4 and that "the last potential weekend of detention was August 29-31." In his notice in lieu of a reply brief, Kushawn essentially concedes the issue is moot but urges this court to address his arguments nevertheless, claiming "the error contested is in fact subject to repetition." We are not persuaded the order is necessarily likely to recur. Rather, it appears to have been a unique order that the court tailored to the circumstances of this case. In addition to the points the state has made, it appears Kushawn's six-month probationary period was to terminate in September. We see no reason to exercise our

discretion and address the moot issue raised in this appeal. *See generally Fry's Food Stores of Ariz. v. Indus. Comm'n*, 177 Ariz. 264, 266, 866 P.2d 1350, 1352 (1994) (general policy of "self-imposed judicial restraint" is to not address moot issues unless they "have significant public importance or are likely to recur").[1]

¶5 Because the only issue Kushawn has raised is moot, we dismiss the appeal.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
JOSEPH W. HOWARD, Judge

[1]We note that Kushawn could have sought special action review by this court to avoid the possibility of the issue's becoming moot while the appeal was pending. *See, e.g., Andrew G. v. Peasley-Fimbres*, 216 Ariz. 204, ¶ 3, 165 P.3d 182, 183 (App. 2007) (finding appeal from order modifying terms of probation not equally plain, speedy, or adequate remedy and accepting special action jurisdiction because "issue will most likely be rendered moot before an appeal is completed").